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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

November 13, 1998

TELEPHONE
(202) 467-5700
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(202) 467-5915

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Washington, DC 20554

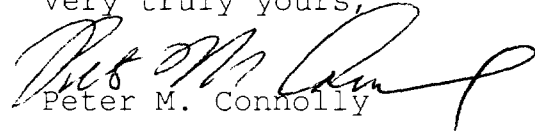
Re: Truth in Billing and Billing Format
CC Docket No. 98-170

Dear Ms. Salas:

Herewith transmitted on behalf of United States Cellular Corporation, are an original and four copies of its Comments in the above-referenced docket.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,


Peter M. Connolly

Enclosure

No. of Copies rec'd 0+4
List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

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NOV 13 1998

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of

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Truth-in-Billing

)

and

) CC Docket No. 98-170

Billing Format

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**COMMENTS OF UNITED STATES
CELLULAR CORPORATION**

United States Cellular Corporation ("USCC") hereby files its Comments on the proposals made in the Notice of Proposed Rulemaking ("NPRM") in the above-captioned docket. USCC owns and/or operates cellular systems in 45 MSA and 100 RSA markets. It serves over two million customers. Accordingly, it has a vital interest in any action the FCC may take regarding mandatory changes in the composition of Commercial Mobile Radio Service ("CMRS") customer bills.

**I. The FCC Should Reconsider its Approach in this
 Proceeding And, in Any Case, Should Not Impose
 its Proposed New Requirements on CMRS
 Carriers.**

The NPRM proposes sweeping new requirements concerning the bills telecommunications carriers send to their customers. The FCC makes these proposals on the theory that telecommunications customers are at present experiencing difficulty in understanding their telephone bills (NPRM, Para. 3) and that, therefore, detailed billing mandates are necessary to ensure that essential information is provided to customers. For the following reasons, however, we ask that the FCC reconsider these ill-advised proposals, and in any case, ask that the Commission not impose

any rules it may adopt on CMRS carriers.

A. The NPRM Has Inadequate Constitutional Support

At the outset, it should be emphasized that what is being proposed by in the NPRM amounts to an unprecedented attempt by the FCC to control the manner in which telecommunication carriers communicate with their customers.

For example, the FCC proposes (NPRM, Paras. 17-19) that separate categories of service, such as charges for local, long distance and miscellaneous services must be described in separate sections within bills and if possible, on separate pages.

The Commission also proposes (NPRM, Para. 18) that bills should have a single page or section which would summarize the current status of a customer's services. This page would have to include information regarding the consumer's current pre-subscribed interstate toll carrier, the consumer's pre-subscribed intrastate toll carrier, the consumer's local exchange carrier and any other service providers, including those providing telecommunications and non-telecommunication related services.

The Commission also seeks comment (NPRM, Para. 19) on whether bills should provide customers with "clear and conspicuous notification" of any "changes" or "new charges" on their telephone bills.

The Commission believes that "vague or inaccurate descriptions" of charges make it difficult for consumers to determine exactly what they are paying for and whether they receive the services that correspond to such charges. Accordingly, the NPRM proposes (Paras. 20-21) that each charge on a consumer's telephone bill be accompanied by a "description" of the services rendered for that charge.

The Commission seeks comment on whether telephone bills must differentiate between “deniable” and “non-deniable” charges. Deniable charges are those charges that, if unpaid, could result in termination of local exchange or long distance telephone services. Non-deniable charges are those charges for which basic telecommunication services could not be terminated for non-payment.

Owing to consumer “concern and confusion” with respect to line item charges that are related to the implementation of universal service support mechanisms, the Commission is also seeking comment on the extent to which carriers that elect to pass on to their customers all or part of the cost of their universal service contributions or access charge obligations are providing complete and accurate information regarding the basis for those new charges and their amounts. In that connection, commenters are asked (NPRM, Paras. 29-32) to address whether the Commission should prescribe “safe harbor” language that carriers could use in their bills to ensure they are meeting their obligations to provide accurate information to subscribers with respect to recovery of universal service charges. The Commission seeks further comment on whether such “safe harbor” language should include a description of the scope and purpose of universal service support mechanisms. The Commission seeks comment on whether long distance carriers which have a separate line item for the recovery of universal service contributions should also be required to explain the net reduction in their access charge costs in providing long distance service since the 1996 Telecommunications Act. The Commission asks how often carriers would have to advise their customers through the use of such “safe harbor” language.

The Commission cites no relevant FCC precedent in support of these proposals. Rather, the Commission merely asserts (NPRM, Para. 13) that it has the authority to act pursuant to Section

201(b) of the Communications Act. Section 201(b) requires that carriers have “charges, practices and classifications” that are “just and reasonable” and grants the FCC power to enforce that section. However, Section 201(b) does not grant to the FCC (and the FCC has never previously asserted) the power to dictate, in advance, the content of customer bills.

We submit that in the absence of any finding that a specific carrier’s billing practices violate Section 201(b) or any other section of the Act, the FCC has no constitutional right to regulate this type of “commercial speech.”

The NPRM (Para. 15, notes 33 and 34) refers to two leading Supreme Court “commercial speech” cases.¹ However, the FCC, in citing the cases, evidently does not grasp their implications for this proceeding. Under those cases the government may act to require corporate advertising to include warnings or disclaimers which are necessary to prevent an advertisement from being deceptive, but cannot act to bar truthful speech about a lawful product or service.² However, by requiring that carrier bills include certain particular information and be arranged in a particular format the FCC will be implicitly banning the inclusion of other information or the display of the same information in other formats. That, we submit, constitutes the type of commercial speech ban overturned in 44 Liquormart. In that case the Supreme Court overturned the State of Rhode Island’s

¹ Virginia Pharmacy Board v. Virginia Citizens Consumer Council, 425 U.S. 748, 772 n. 24 (1976); 44 Liquormart v. Rhode Island, 517 U.S. 484 (1996).

² There is, we would note, a fundamental question, which the NPRM ignores, as to whether customer bills are, for the purposes of first amendment analysis, the same as advertising. We would submit that advertising, which is an attempt to persuade the public to purchase something, might justifiably be regulated more easily than bills, which (if accurate) only record and ask payment for charges previously incurred. We however have found no cases discussing the issue.

statutory ban on the advertisement of accurately stated liquor prices. Under that case the FCC cannot impose a prior restraint on carriers describing in their own words the reasons for particular charges.

The FCC's proposed restrictions might conceivably survive first amendment scrutiny if they were the only way to prevent bills from being deceptive. But they obviously are not. Many carriers' bills, while not including all the provisions in the format desired by the FCC, provide customers with accurate information and are not misleading. It would be reasonable (and constitutional) for the FCC to call attention to perceived substantive abuses reflected (or not reflected) in carriers' bills and make it clear that it will enforce its requirements, when and if complaints are filed. What is not reasonable or constitutional is for the FCC to adopt a "one size fits all" mandatory formula for the wording of bills and to punish any departures from it. That would amount to a prohibition on a certain type of truthful commercial speech and would be unconstitutional under 44 Liquormart and the cases it cites.

**B. Any Restriction Which the Commission
Imposes Should Not Include CMRS
Carriers.**

As noted above, USCC believes that for the FCC to prescribe the wording and format of customer bills would be unconstitutional and accordingly urges the Commission not to go forward with this proceeding.

However, if, despite that difficulty, the FCC does decide to go forward, it should certainly exempt CMRS carriers from any new requirements. As the NPRM itself makes clear, CMRS carriers are not responsible for the alleged abuses which are evidently the cause of this proceeding. Also, the solutions proposed are largely irrelevant to CMRS carriers and their customers and should not be imposed on them.

It is striking that the NPRM makes only one specific reference to CMRS carriers, namely in Paragraph 26, where the FCC states that its inquiry about whether carriers are providing adequate information to customers concerning universal service contributions also applies to CMRS carriers.

Other than that passing reference the NPRM deals entirely with alleged transgressions by LECs and IXC's, with which wireless carriers have nothing to do.

For example, the FCC (NPRM, Paras. 17-19) argues that a principal reason to require separate sections or even separate pages on bills for different categories of service is to deter "slamming," i.e., an unauthorized change in long distance carriers. However cellular carriers need not provide "equal access" to long distance carriers under Section 332(c)(8) of the Act [47 U.S.C. §332(c)(8)] and can change the long distance carrier whose services they resell whenever their contracts will permit. Thus, for CMRS carriers, "slamming" is not a meaningful concept.

The NPRM, as noted above, also asks (Para. 19) whether bills should have a separate section regarding customers' presubscribed interstate and intrastate toll carriers, local exchange carriers and other service providers. However, while this information might be meaningful in the wireline context it has no relevance to CMRS carriers and the services they provide or for which they bill.

The NPRM (Para. 19) proposes that bills provide "clear and conspicuous" notification of any "changes" and "new charges." The listed examples of what the FCC is concerned about include, inter alia, notifications about changes in presubscribed carriers, changes in "new service providers" and changes in "PC freeze status," as well as explanations of other new line items. The specific changes mentioned are obviously irrelevant to CMRS carriers.

Paragraph 24 of the NPRM notes the Commission's concern about the distinction between "deniable" and "non-deniable" charges. All CMRS charges are "deniable" for these purposes.

Accordingly, CMRS carriers would have no reason to discuss this issue in their bills.

Even when they are not, strictly speaking, irrelevant to CMRS carriers, many of the requirements proposed in the NPRM would be hugely and unnecessarily burdensome to such carriers. For example, though it is not totally clear, Paragraph 18 of the NPRM would appear to propose requiring the listing all of the cellular roaming partners for whom charges are being billed. In the case of a cellular carrier whose customers had roamed in many jurisdictions during a billing period, this would mean listing scores of cellular licensees whose roaming charges were being passed through to the customer. Why having to do this would be better and less confusing to the customer than simply listing the day, time, location, duration, frequency block and cost of such calls, as is done by USCC and other cellular carriers, is not made clear in the NPRM. In fact, bills which had to include the licensee names of "roamed upon" systems would be vastly more annoying and confusing to customers than current bills. This seemingly minor example of the law of unintended consequences is a good reason why the FCC should leave CMRS carriers out of whatever requirements it adopts.

Perhaps the most important reasons for the issuance of the NPRM are given in Paragraphs 25-32, which deal with customer charges imposed as a consequence of federal universal support mechanisms. It is fair to say that the FCC is very concerned: (a) that some carriers may have represented, falsely, that such charges have been mandated on end users by the FCC; (b) that some long distance carriers may not have advised customers that the cost increases caused by such charges may have been exceeded by their cost reductions achieved as a consequence of access charge reductions; and (c) that some carriers may be charging their customers dollar amounts for "universal service" which are in excess of their actual payments to the universal service funds.

Concerning these issues we would make two points. First, it should be noted that Point B above has nothing to do with wireless carriers. Such carriers pay essentially no access charges and thus have no decrease in such charges to set off against their universal service payments.

Second, while it is the case that CMRS carriers must make universal service payments and may recover the costs of such payments from customers, since such carriers' rates are not regulated by the states or federal government, there are inherent difficulties in regulating how wireless carriers charge customers, since all such charges are ultimately dictated by marketplace. However, we certainly agree that any bill item labeled as a reimbursement for a universal service charge should be accurate and not misleading.

USCC thus would not object to a requirement that if CMRS carriers choose to label one of the items in their bills as a reimbursement for federally mandated universal service payments the amount shown for that item be related to their actual universal service payments.³ However, given the legal status of CMRS systems in relation to such payments, it is regulatory overkill to go beyond that. The FCC is evidently mainly concerned about the behavior of interexchange carriers with respect to such charges. If so, those are the entities at whom its rules should be directed.

II. There Is No Reason to Believe That CMRS Bills Are Now Inaccurate or Unclear

The NPRM does not contain any explicit reference to a complaint about or a problem concerning the bills rendered by CMRS carriers. This, in and of itself, is an excellent reason not to proceed with strict regulation of CMRS bills or indeed with any regulation of such bills.

³ Given the uncertainty of required federal universal service payments, however, which such charges attempt to anticipate, mathematical exactitude in such charges should not be required.

Moreover, we believe that CMRS carriers' bills are now accurate and complete and that such carriers have done nothing to warrant the imposition of this onerous new FCC policy.

Attached hereto (Attachment A) is a copy of a USCC bill, redacted to exclude personal information. As the Commission will see, it summarizes and details monthly charges and account status. It furnishes adequate detail regarding roaming calls, and lists credits and other "charges," including "universal service" charges. It breaks out charges by time of day and service plan. The bill is concise, clear, accurate and informative.

We submit there is no good reason to force USCC to alter its billing format and add the level of additional information and explanatory detail proposed in the NPRM.

Wireless is a competitive business and growing more so all the time. Wireless carriers welcome competition. Unlike the ILECs, CLECs, and IXC's, which have fought and obstructed each other at every turn, cellular carriers did not object to the licensing of their PCS, "enhanced SMR," LMDS, mobile satellite, or ILEC competitors. If customers are dissatisfied with a CMRS carrier's billing practices, they can and do switch to competing carriers. Wireless prices are dropping. From June, 1988 to June, 1998, the average monthly bill for cellular customers dropped from \$95.00 to \$39.88.⁴ In CMRS, the free market is working exactly as economic theory indicates that it should.

Also, CMRS carriers and their billing practices are subject to the federal consumer protection statutes enforced by the FTC and to a myriad of state consumer protection laws enforced by state attorneys general and consumer protection agencies. At least where CMRS carriers are concerned there is simply no need for the FCC to take the actions proposed. CMRS billing procedures are not broken and do not need to be fixed.


⁴ Source: June, 1988 CTIA Semi-Annual Data Survey.

Conclusion

For the foregoing reasons, the FCC should not act to regulate and control the content of telecommunications carriers' bills. However, if the Commission does decide to do so, CMRS carriers should not be subject to the requirements.

Respectfully submitted,

**UNITED STATES CELLULAR
CORPORATION**

By: 
Peter M. Connolly
Koteen & Naftalin, L.L.P.
1150 Connecticut Ave., N.W.
Washington, D.C. 20036

November 13, 1998

Its Attorneys

UNITED STATES

WIRELESS COMMUNICATIONS

ACCOUNT NUMBER: 59604315

BILLING DATE: 05/12/98

INVOICE NUMBER: 59604315-7-058

DUE DATE: 06/02/98

PREVIOUS BALANCE	PAYMENTS THRU 05/11/98	ADJUSTMENTS THRU 05/11/98	PAST DUE BALANCE	CURRENT CHARGES	ADVANCE PAYMENTS	TOTAL AMOUNT DUE
\$63.47	\$63.47CR	\$0.00	\$0.00	\$57.91	\$0.00	\$57.91

SUMMARY OF CURRENT CHARGES

MONTHLY SERVICE	\$54.90
OTHER CHARGES AND CREDITS	\$4.01CR
USAGE CHARGES	\$0.00
ROAMING CHARGES	\$2.56
TAXES	\$4.46
TOTAL CURRENT CHARGES	\$57.91

FOR ALL BILLING INQUIRIES, CALL (888)944-9400.

Please detach and mail bottom portion with your payment to ensure prompt handling.

UNITED STATES

PAGE

2

ACCOUNT NUMBER:

BILLING DATE: 05/12/98

WIRELESS COMMUNICATIONS

000585

ACCOUNT SUMMARY INFORMATION**DETAIL OF PAYMENTS AND ADJUSTMENTS**

04/23/98 - PAYMENT.....THANK YOU!

\$63.47 CR

TOTAL PAYMENTS AND ADJUSTMENTS..... \$63.47 CR**SUMMARY OF CHARGES BY SERVICE LINE**

ACCOUNT LEVEL CHARGES AND CREDITS

\$0.00

(803)310-

\$50.93

(803)310-

\$15.70

(803)310-

\$11.28

TOTAL CURRENT CHARGES..... \$57.91**ACCOUNT SUMMARY OF AIRTIME USAGE**

CAROLINA 70 SHARETALK

	RATE	SPECIAL MINUTES	HOME MINUTES	TOTAL MINUTES
90 MINUTES P/O	.00	13.0	34.0	47.0
PEAK(P)	0.35	0.0	0.0	0.0
OFF-PEAK(OP)	0.35	0.0	0.0	0.0
TOTAL:		13.0	34.0	47.0

DETAIL OF CURRENT CHARGES**ACCOUNT LEVEL CHARGES AND CREDITS****MONTHLY SERVICE:**

803 AREA CODE TOLL FREE - 05/12/98 THROUGH 06/11/98

\$0.00

803 AREA CODE TOLL FREE - 05/12/98 THROUGH 06/11/98

\$0.00

CAROLINA SOUTH REGION RERATE - 05/12/98 THROUGH 06/11/98

\$0.00

CAROLINA 70 SHARETALK - 05/12/98 THROUGH 06/11/98

\$0.00

TOTAL MONTHLY SERVICE..... \$0.00**TOTAL CURRENT ACCOUNT LEVEL CHARGES AND CREDITS****\$0.00**

(803)310-6650

JIMMY WOOD

SERVICE LINE 000101

MONTHLY SERVICE:

CAROLINA 70 SHARETALK - 05/12/98 THROUGH 06/11/98

\$25.00

TOTAL MONTHLY SERVICE..... \$25.00**OTHER CHARGES AND CREDITS:**

FEDERAL UNIVERSAL SERVICE

\$0.35

NETWORK SURCHARGE (.02 X 27.0 MIN.)

\$0.54

ROAMING ADMINISTRATION FEE

\$2.00

TOTAL OTHER CHARGES AND CREDITS..... \$2.89

BILLING DATE: 05/12/90

013345

USAGE CHARGES:

CAROLINA 70 SHARETALK

	SPECIAL MINUTES	HOME MINUTES	CHARGE
AIRTIME - INCLUDED	7.0	20.0	.00
PEAK(P)	0.0	0.0	.00
OFF-PEAK(OP)	0.0	0.0	.00
AIRTIME TOTALS:	7.0	20.0	\$0.00
TOLL CHARGES:			\$0.00
TOTAL USAGE CHARGES.....			\$0.00

ROAMING CHARGES:

ROAMING SURCHARGES	\$0.00
ROAMING AIRTIME CHARGES	\$0.00
ROAMING TOLL CHARGES	\$0.78
ROAMING TAXES	\$0.00

TOTAL ROAMING CHARGES.....

\$0.78

TAXES:

FEDERAL	\$0.86
STATE	\$1.40
LOCAL	\$0.00

TOTAL TAXES.....

\$2.26

TOTAL CURRENT CHARGES FOR (803)310-6650

\$30.93

ROAMING DETAIL:

NO.	TIME	DESTINATION	NUMBER CALLED	MINUTES	AIRTIME CHARGES	TOLL CHARGES	SURCHARGE	TAX	TOTAL
For (803)310-6650									
Calls made from COLUMBIA SC on 04/15/90 - A Band									
0001	04:01pm	CAMDEN SC	(803)430-2017	1.0	SPECIAL	0.39			0.00
									0.39
Calls made from COLUMBIA SC on 04/26/90 - A Band									
0002	07:27am	CAMDEN SC	(803)432-7372	1.0	SPECIAL	0.39			0.00
									0.39
TOTALS				2.0	\$0.00	\$0.78	\$0.00	\$0.00	\$0.78

(803)310-6650

MOLLY NETTLES

SERVICE LINE 000102

MONTHLY SERVICE:

CAROLINA 70 SHARETALK - 05/12/90 THROUGH 06/11/90

\$14.95

TOTAL MONTHLY SERVICE.....

\$14.95

WIRELESS COMMUNICATIONS

00000

OTHER CHARGES AND CREDITS:

FEDERAL UNIVERSAL SERVICE \$0.35
 NETWORK SURCHARGE (.02 X 20.0 MIN.) \$0.40
 ROAMING ADMINISTRATION FEE \$2.00
 PROMOTIONAL SERVICE CREDIT \$5.00 CR

TOTAL OTHER CHARGES AND CREDITS..... \$2.25 CR ✓

USAGE CHARGES:

CAROLINA 70 SHARETALK

	SPECIAL MINUTES	HOME MINUTES	CHARGE
AIRTIME - INCLUDED	6.0	14.0	.00
PEAK(P)	0.0	0.0	.00
OFF-PEAK(OP)	0.0	0.0	.00
AIRTIME TOTALS:	6.0	14.0	\$0.00
TOLL CHARGES:			\$0.00

TOTAL USAGE CHARGES..... \$0.00 ✓

ROAMING CHARGES:

ROAMING SURCHARGES \$0.00
 ROAMING AIRTIME CHARGES \$0.50
 ROAMING TOLL CHARGES \$1.26
 ROAMING TAXES \$0.02

TOTAL ROAMING CHARGES..... \$1.78

TAXES:

FEDERAL \$0.58
 STATE \$0.64
 LOCAL \$0.00

TOTAL TAXES..... \$1.22

TOTAL CURRENT CHARGES FOR (803)310-8652 \$15.70

ROAMING DETAIL:

NO.	TIME	DESTINATION	NUMBER CALLED	MINUTES	AIRTIME CHARGES	TOLL CHARGES	SURCHARGE	TAX	TOTAL
For (803)310-6651									
Calls made from COLUMBIA SC on 04/06/98 - A Band									
0001	03:20pm	CAMDEN SC	(803)432-6752	1.0	SPECIAL	0.39			0.39
Calls made from COLUMBIA SC on 04/27/98 - A Band									
0002	06:08pm	CAMDEN SC	(803)424-8468	2.0	SPECIAL	0.78			0.78
Calls made from CALHOUN SC on 05/03/98 - A Band									
0003	02:49pm	COLUMBIA SC	(803)799-9050	1.0	0.50	0.09		0.02	0.61
TOTALS				4.0	\$0.50	\$1.26	\$0.00	\$0.02	\$1.78

(803)310-8652 SERVICE LINE 808105
 DAVE NORRIS

MONTHLY SERVICE:

803 AREA CODE TOLL FREE - 05/12/98 THROUGH 06/11/98 \$0.00
 803 AREA CODE TOLL FREE - 05/12/98 THROUGH 06/11/98 \$0.00

BILLING DATE: 05/12/98

000000

CAROLINA 70 SHARETALK - 05/12/98 THROUGH 06/11/98

\$14.95

TOTAL MONTHLY SERVICE.....

\$14.95 ✓

OTHER CHARGES AND CREDITS:

FEDERAL UNIVERSAL SERVICE

\$0.35

PROMOTIONAL SERVICE CREDIT

\$5.00 CR

TOTAL OTHER CHARGES AND CREDITS.....

\$4.65 CR ✓

TAXES:

FEDERAL

\$0.46

STATE

\$0.52

LOCAL

\$0.00

TOTAL TAXES.....

\$0.98 ✓

TOTAL CURRENT CHARGES FOR 05/12/98

\$11.25